

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
IMOGENE REEVES	:	DETERMINATION
for Redetermination of a Deficiency or for	:	
Refund of New York State Personal Income Tax	:	
under Article 22 of the Tax Law and New York	:	
City Personal Income Tax under Chapter 46,	:	
Title T of the Administrative Code of the City	:	
of New York for the Years 1979 and 1980.	:	

Petitioner, Imogene Reeves, G.P.O. Box 820, New York, New York 10116, filed a petition for redetermination of a deficiency or for refund of New York State personal income tax under Article 22 of the Tax Law and New York City personal income tax under Chapter 46, Title T of the Administrative Code of the City of New York for the years 1979 and 1980 (File No. 806179).

A hearing was held before Robert F. Mulligan, Administrative Law Judge, at the offices of the Division of Tax Appeals, Two World Trade Center, New York, New York, on March 21, 1990 at 1:15 P.M., with additional documentation to be submitted by June 21, 1990. Petitioner appeared pro se. The Division of Taxation appeared by William F. Collins, Esq. (Lawrence A. Newman, Esq., of counsel).

ISSUE

Whether petitioner filed timely New York State and City of New York income tax returns for 1979 and 1980.

FINDINGS OF FACT

(a) Petitioner, Imogene Reeves, filed a timely Federal income tax return for 1979. On July 21, 1980, a notice was issued by the Internal Revenue Service to petitioner at the address G.P.O. Box 820, New York, New York 10116, stating that an overpayment of \$902.51 on said return was being applied to her tax liability for 1974 and that a balance of \$749.14 remained

due for 1974.

(b) Petitioner filed a timely Federal income tax return for 1980. On June 1, 1981, the Internal Revenue Service issued a notice to petitioner at the same address as the 1979 notice, correcting petitioner's reported taxes. The notice stated "AN ERROR WAS MADE IN FIGURING YOUR ADJUSTED GROSS INCOME ON LINE 11, FORM 1040A." The tax shown on the return was \$3,333.00 and the corrected tax was \$3,363.00. As tax withheld was \$4,217.08, this resulted in an overpayment of \$854.08.

Petitioner claims that she timely filed New York State and City of New York returns for 1979 and 1980. The Division of Taxation claims that it received the 1979 and 1980 returns from petitioner in correspondence submitted by her in an envelope postmarked June 1, 1985. The returns show petitioner's address as G.P.O. Box 820, New York, New York 10001¹. The 1979 return is dated April 15, 1980 and shows a refund due of \$335.42 with the notations "Apply on Taxes 1973, 77, 78" and "Please apply on back taxes". The 1980 return is dated April 15, 1981 and shows a refund due of \$349.83, with the notations "Credit to back taxes 1977, 1978" and "Please credit overpayment to balance taxes due 1977, 78 and refund remainder to me".

As of December 16, 1987, the Division of Taxation's accounts receivable system computer records showed that petitioner had outstanding assessments for 1973, 1977 and 1978. Nothing was shown for any other year. Moreover, the Division of Taxation has no record of petitioner having filed New York State and City of New York income tax returns for 1979 and 1980.

On January 20, 1984, a letter was sent to petitioner by the Division of Taxation stating that it had received information that petitioner filed a Federal income tax return for 1981 showing a New York address, but no New York State return could be found. It is unknown if petitioner responded to this letter. On December 4, 1984, the Division of Taxation issued a Statement of Audit Changes to petitioner for 1981 asserting \$1,723.39 in tax due, plus penalty

¹The postal zip code shown on the Federal notices, on the petition, and in other correspondence, is 10116.

and interest, for a total of \$2,981.51. On April 14, 1985, the Division of Taxation issued a notice to petitioner for 1981 stating that:

"As a result of your correspondence and/or recent conference, the balance of the above assessment has been cancelled."

On January 23, 1985, a letter was sent to petitioner by the Division of Taxation stating that it had received information that petitioner had filed a Federal return for 1982 with a New York address, but no New York return could be found. Petitioner checked the box on the letter indicating that she had not filed a New York State return for 1982 and added:

"Not a New York State Resident. Moved out of State. Did not work in N.Y. State 1975, 76; Returns filed for other years. Have enclosed copies of Income Tax Returns filed for years ending: 1982 and 1983."

On February 20, 1987, the Division of Taxation wrote to petitioner stating, in pertinent part, as follows:

"We have thoroughly searched our files and can find no record of a 1977, 1978, 1989 [sic] or 1980 return being filed prior to the ones in your letter of June 1, 1985. Therefore, this date is being considered the filing date for these periods.

The New York State Tax Law does not allow the refund or the credit of a return filed more than 3 years from the original due date of the return (Section 687 of the New York State Tax Law). Your 1979 and 1980 returns, originally due on April 15, 1980 and April 15, 1981, should have been filed on or before April 15, 1983 and April 15, 1984, respectively. Since the earliest filing date available is June 1, 1985, your overpayment request for both of these returns have [sic] been disallowed.

In assembling [sic] all of your information, an overpayment condition was found on your 1981, 1982 and 1983 returns. These three returns are being processed and the overpayments are being applied to your 1973, 1977 and 1978 tax liabilities. A document showing the final net computation will be sent to you shortly."

By letter dated February 11, 1988, the Division of Taxation denied petitioner's claim of \$685.25 in credit or refund for 1979 and 1980, again on the basis that the returns had been received with a filing date of June 1, 1985.

CONCLUSIONS OF LAW

A. That petitioner has failed to sustain her burden of proof under Tax Law § 689(e) and Administrative Code former § T46-189.0(e) to show that she filed timely New York State and City of New York income tax returns for 1979 and 1980. Accordingly, Tax Law § 687 and

Administrative Code former § T46-187.0 preclude credit or refund of the overpayments to which petitioner would have been entitled for 1979 and 1980.

B. That the petition of Imogene Reeves is denied and the denial of the claim for credit or refund dated February 11, 1988 is sustained.

DATED: Troy, New York

ADMINISTRATIVE LAW JUDGE